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Attorneys for Defendant City of San Diego,

EXEMPT FROM FILING FEES
PURSUANT TO GOV'T CODE § 6103

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

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| AMERICAN TOWER CORPORATION, a Delaware corporation, et al.<br><br>Plaintiff,<br><br>v.<br><br>THE CITY OF SAN DIEGO, a California Municipal Corporation,<br><br>Defendant. | Case No. O8cv0864 JM (WMc)<br><br>**DEFENDANT CITY OF SAN DIEGO'S ANSWER TO COMPLAINT**<br><br>Judge: Honorable Jeffrey Miller<br>Courtroom: 16 |

Defendants City of San Diego hereby answers the Complaint of Plaintiff, as follows:

**COMPLAINT'S BRIEF STATEMENT OF THE CASE**

1. Paragraph 1 consists of legal conclusions which require no response. To the extent the paragraph contains other allegations, Defendant is without knowledge or information sufficient to admit or deny the allegations and therefore denies all allegations in their entirety.

2. Paragraph 2 consists of legal conclusions which require no response. To the extent the paragraph contains other allegations, Defendant is without knowledge or information sufficient to admit or deny the allegations and therefore denies all allegations in their entirety.

3. Defendant admits there are other actions, as entitled, pending in this Court but denies each and every other allegation in paragraph 3.

**JURISDICTION AND VENUE**

4. Defendant admits that this Court has jurisdiction over claims arising under the United States Constitution and laws of the United States, however, Defendant denies and objects to the Court retaining jurisdiction of all other claims under 28 U.S.C. § 1367. Defendant further denies that Plaintiff has standing to bring the claims under the Telecommunications Act. Defendant denies all other allegations.

5. Defendant admits that venue is proper in this Court.

**PARTIES**

6. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in the paragraph 6.

7. As to paragraph 7, Defendant denies the allegations thereof based upon a lack of knowledge upon which to form a belief as to the truth or falsity of the allegations and therefore denies all allegations in their entirety.

8. Defendant admits the allegations contained in paragraph 8.

**I. ATC'S CONDITIONAL USE PERMITS**

9. Defendant admits that a Conditional Use Permit, number 84-0469, for an antenna, was granted to PacTel Mobile Access Inc. on November 20, 1984. The defendant denies all remaining allegations in their entirety.

10. Defendant admits that a Conditional Use Permit, number 83-0629, for an antenna, was also granted to Pactel Mobile Access Inc. on November 20, 1984. The defendant denies all other allegations in their entirety.

11. Defendant denies all allegations in paragraph eleven in their entirety.

12. Defendant denies all allegations in paragraph twelve in their entirety.

13. Defendant admits that Plaintiff's facilities are major telecommunications facilities and that Plaintiff refused and continues to refuse to comply with the rules applicable

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to such facilities within The City of San Diego. Defendant denies all remaining allegations in their entirety.

14. Defendant admits that an untimely application for extension or a Planned Development Permit for the 30th Place facility was submitted in late December, 2005. Defendant also admits that because the application involved a possible renewal of "existing facilities" that it would be exempt from CEQA. Further, Defendant admits that the Planning Commission voted to deny the Conditional Use Permit and Planned Development Permit as requested by ATC. The Defendant generally and specifically denies all other allegations in their entirety.

15. Defendant admits that an untimely application for extension or a Planned Development Permit for the Mt. Ada facility was submitted in December, 2005. Defendant also admits that because the application involved a possible renewal of "existing facilities" that it would be exempt from CEQA. Further, Defendant admits that the Planning Commission voted to deny the Conditional Use Permit as requested by ATC. The Defendant generally and specifically denies all other allegations in their entirety.

16. Defendant denies the allegations contained in paragraph 16 in their entirety.

17. Defendant lacks information upon which to admit or deny allegations in paragraph 17 and therefore denies the allegations in their entirety.

18. Defendant admits that the Plaintiff's Conditional Use Permits expired, by their terms, before ATC sought to renew them. Defendant lacks information upon which to admit or deny allegations the remaining allegations in paragraph 18 and therefore denies the allegations in their entirety.

19. Defendant denies the allegations in the paragraph in their entirety.

20. Defendant admits that the Planning Commission denied the 30th Place CUP and PDP and denies the remaining allegations in the paragraph in their entirety.

21. Defendant admits that the City Council denied the Mt. Ada CUP and a related Site Development Permit. Further, Defendant admits that the Council denied ATC's appeal of

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the Planning Commission's denial of its 30th Place CUP. The defendant denies the other allegations contained in the paragraph.

22. Defendant admits that exhibit 8, attached to the complaint, contains the city council's meeting results but denies all other allegations in their entirety.

23. Defendant admits that the actions of the City regarding the 30th Place CUP and the Mt. Ada CUP are final. Defendant denies the remaining allegations in their entirety.

## II. THE CITY OF SAN DIEGO LAND DEVELOPMENT CODE

24. Defendant admits that a copy of section 141.0405 is attached as an exhibit but the remainder of the allegations consist of legal conclusions and Defendant denies all of the remaining allegations of paragraph 24 in their entirety.

25. The allegations of paragraph 25 consist of legal conclusions that require no response. The contents of San Diego Municipal Code section 141.0405 speaks for itself and is the best evidence of its rules. Except as otherwise admitted, Defendant denies the allegations in paragraph 25.

26. The allegations of paragraph 26 consist of legal conclusions that require no response. The content of San Diego Municipal Code section 141.0405 speaks for itself and is the best evidence of its rules.

27. The allegations of paragraph 27 consist of legal conclusions that require no response. The content of San Diego Municipal Code section 141.0405 speaks for itself and is the best evidence of its rules. Except as otherwise admitted, Defendant denies the allegations in paragraph 27.

28. The allegations of paragraph 28 consist of legal conclusions that require no response. The content of San Diego Municipal Code section 141.0405 speaks for itself and is the best evidence of its rules. Except as otherwise admitted, Defendant denies the allegations in paragraph 28.

29. The allegations of paragraph 29 consist of legal conclusions that require no response. The cited code sections are the best evidence of what is contained therein.

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30. The allegations of paragraph 30 consist of legal conclusions that require no response. Defendant denies the allegations in paragraph 30.

31. The allegations of paragraph 31 consist of legal conclusions that require no response. The content of San Diego Municipal Code section 126.0604 speaks for itself and is the best evidence of its rules. Except as otherwise admitted, Defendant denies the allegations in paragraph 31.

**III. THE FEDERAL COMMUNICATIONS ACT**

32. The allegations of paragraph 32 consist of legal conclusions that require no response. The content of the Communications Act speaks for itself and is the best evidence of its contents. Except as otherwise admitted, Defendant denies the allegations in paragraph 32.

33. The allegations of paragraph 33 consist of legal conclusions that require no response. The cited law speaks for itself and is the best evidence of its contents. Except as otherwise admitted, Defendant denies the allegations in paragraph 33.

34. The allegations of paragraph 34 consist of legal conclusions that require no response. The cited law speaks for itself and is the best evidence of its contents. Except as otherwise admitted, Defendant denies the allegations in paragraph 34.

35. The allegations of paragraph 35 consist of legal conclusions that require no response. The cited law speaks for itself and is the best evidence of its contents. Except as otherwise admitted, Defendant denies the allegations in paragraph 35.

36. The allegations of paragraph 36 consist of legal conclusions that require no response. The cited law speaks for itself and is the best evidence of its contents. Except as otherwise admitted, Defendant denies the allegations in paragraph 36.

37. The allegations of paragraph 37 consist of legal conclusions that require no response. The cited law speaks for itself and is the best evidence of its contents. Except as otherwise admitted, Defendant denies the allegations in paragraph 37.

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## IV. THE PERMIT STREAMLINING ACT

38. The allegations of paragraph 38 consist of legal conclusions that require no response. The cited codes speak for themselves and are the best evidence of its contents. Except as otherwise admitted, Defendant denies the allegations in paragraph 38.

39. The allegations of paragraph 39 consist of legal quotations that require no response. The cited codes speak for themselves and are the best evidence of contents. Except as otherwise admitted, Defendant denies the allegations in paragraph 39.

40. The allegations of paragraph 40 consist of legal quotations and conclusions that require no response. The cited codes speak for themselves and are the best evidence of contents. Except as otherwise admitted, Defendant denies the allegations in paragraph 40.

41. The allegations of paragraph 41consist of legal quotations and conclusions that require no response. The cited codes speak for themselves and are the best evidence of contents. Except as otherwise admitted, Defendant denies the allegations in paragraph 41.

42. The allegations of paragraph 42 consist of legal quotations and conclusions that require no response. The cited codes speak for themselves and are the best evidence of contents. Except as otherwise admitted, Defendant denies the allegations in paragraph 42.

43. The allegations of paragraph 43 consist of legal quotations and conclusions that require no response. The cited codes speak for themselves and are the best evidence of contents. Except as otherwise admitted, Defendant denies the allegations in paragraph 43.

44. The allegations of paragraph 44 consist of legal conclusions that require no response. Defendant denies the allegations in paragraph 44.

45. Defendant denies the allegations in paragraph 45 in their entirety.

## COUNT I

46. The Defendant denies each and every allegation in paragraph 46.

47. The allegations of paragraph 47 consist of legal quotations and conclusions that require no response. The cited codes speak for themselves and are the best evidence of contents. Except as otherwise admitted, Defendant denies the allegations in paragraph 47.

48. The Defendant denies the allegations in paragraph 48 in their entirety.

49. Defendant denies the allegations in the paragraph in their entirety.

**COUNT II**

50. Defendant denies the allegations in the paragraph in their entirety.

51. The allegations of paragraph 51 consist of legal quotations and conclusions that require no response. The cited codes speak for themselves and are the best evidence of contents.

52. The Defendant denies the allegations of paragraph 52 in their entirety.

53. Defendant denies the allegations in the paragraph in their entirety.

54. The allegations of paragraph 54 consist of legal conclusions that require no response. Defendant denies the allegations in paragraph 54.

**COUNT III**

55. Defendant denies the allegations in the paragraph in their entirety.

56. The allegations of paragraph 56 consist of legal conclusions/quotations that require no response. The cited codes speak for themselves and are the best evidence of contents. Except as otherwise admitted, Defendant denies the allegations in paragraph 56.

57. Defendant denies the allegations in the paragraph in their entirety.

58. Defendant denies the allegations in the paragraph in their entirety.

**COUNT IV**

59. Defendant denies the allegations in the paragraph in their entirety.

60. The allegations of paragraph 60 consist of legal conclusions/quotations that require no response. The cited codes speak for themselves and are the best evidence of contents. Except as otherwise admitted, Defendant denies the allegations in paragraph 60.

61. Defendant admits that Plaintiff's CUPs have expired and that the City Council has not extended their validity beyond their original expiration dates. The remaining allegations of paragraph 61 consist of legal conclusions that require no response. The cited codes speak for themselves and are the best evidence of contents. Except as otherwise admitted, Defendant denies the allegations in paragraph 61.

denies the allegations in the paragraph in their entirety.

62. Defendant denies the allegations in the paragraph in their entirety.

63. The allegations of paragraph 63 consist of legal conclusions and the Defendant denies the allegations in the paragraph in their entirety.

**COUNT V**

64. Defendant denies the allegations in the paragraph in their entirety.

65. The allegations of paragraph 65 consist of legal conclusions/quotations that require no response. The cited codes speak for themselves and are the best evidence of contents. Except as otherwise admitted, Defendant denies the allegations in paragraph 65.

66. Defendant denies the allegations in the paragraph in their entirety.

67. Defendant denies the allegations in the paragraph in their entirety.

68. Defendant denies the allegations in the paragraph in their entirety.

**COUNT VI**

69. Defendant denies the allegations in the paragraph in their entirety.

70. The allegations of paragraph 70 consist of legal conclusions/quotations that require no response. The cited laws speak for themselves and are the best evidence of contents. Defendant denies the allegations in paragraph 70 in their entirety.

71. Defendant denies the allegations in the paragraph in their entirety.

72. Defendant denies the allegations in the paragraph in their entirety.

73. The allegations of paragraph 73 consist of legal conclusions that require no response. Defendant denies the allegations in paragraph 73 in their entirety.

74. Defendant denies the allegations in the paragraph in their entirety.

**COUNT VII**

75. Defendant denies the allegations in the paragraph in their entirety.

76. Defendant denies the allegations in the paragraph in their entirety.

77. The allegations of paragraph 77 consist of legal conclusions/quotations that require no response. The cited laws speak for themselves and are the best evidence of contents. Except as otherwise admitted, Defendant denies the allegations in paragraph 77.

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**PRAYER FOR RELIEF**

Defendant denies the entirety of Plaintiff's prayer for relief.

**AFFIRMATIVE DEFENSES**

As separate and distinct affirmative defenses to the Complaint on file herein, Defendant alleges as follows:

**I**

The Complaint, and each and every allegation contained therein, fails to state facts sufficient to constitute a cause of action against each and every Defendant.

**II**

Plaintiff failed to exhaust any and all administrative remedies.

**III**

Plaintiff has failed to exercise ordinary care, caution or prudence for its own welfare, or those it represents, or to avoid the happening of the damages, if any, alleged in the Complaint, and by Plaintiff's failure to do so, it has prejudiced Defendant and directly and proximately caused and contributed (in whole or in part) to the happening of alleged damages, if any.

**IV**

Defendant acted reasonably, in good faith and with proper care at all relevant times.

**V**

The Complaint is barred, in whole or in part, by the doctrines of estoppel and waiver.

**VI**

The Complaint is barred, in whole or in part, by the doctrine of "unclean hands."

**VII**

The Complaint is barred to the extent that Plaintiff has failed to mitigate its alleged damages, if any.

**VIII**

The Complaint is barred, in whole or in part, by the applicable statute of limitations, including but not limited to, Code of Civil Procedure sections 335.1, 337, 338, 339, 340, 342 and/or 343, Government Code sections 901, 945.4, 945.6, 945.8, and other time requirements as set forth in the remaining affirmative defenses.

**IX**

This responding party is not legally responsible for Plaintiff's alleged damages. However, if this responding party is found to be legally responsible, Defendant alleges that such responsibility is not the sole and legal cause of any damages alleged by Plaintiff, and that the damages, if any, awarded to Plaintiff are to be apportioned according to the respective fault and legal responsibility of all parties which contributed to or caused said damages.

**X**

Plaintiffs, and each of them, have not and cannot allege any cognizable injury suffered by them as a result of Defendants' allegedly unlawful conduct.

**XI**

The facts alleged in the Complaint, and each cause of action therein, do not constitute a cause of action against Defendant in that Plaintiff failed to comply with the claims presentation requirements set forth in Government Code sections 905, 906, 910-910.6, 911-911.8, 912.2-912.8, 913, 915, 915.2, 915.4, 926.10, 930.2-930.6, 935-935.4, 945.2, 945.4, 945.6, 945.8, 949, 946.4, 946.6, 950-950.8 and such other sections of said code as may be applicable

**XII**

Defendant is immune from liability for acts or omissions where the act or omission was the result of the exercise of discretion pursuant to Government Code sections 815-815.6.

**XIII**

Defendant is immune from liability for acts or omissions where the act or omission pursuant to Government Code sections 818.2-818.8.

**XIV**

Defendant is immune from liability for acts or omissions where the act or omission pursuant to Government Code sections 820.2.

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XV

Defendant is immune from liability for acts or omissions where the act or omission pursuant to Government Code sections 821.2-821.6 and 822.2.

XVI

Defendant is immune from liability for acts or omissions where the act or omission pursuant to Government Code sections 825-825.6.

XVII

Defendant is immune from liability for acts or omissions where the act or omission pursuant to Government Code sections 840-840.6.

XIII

The plaintiff's damages, if any, are attributable to a legitimate exercise of the City's police power and therefore not compensable.

XIX

The Complaint is barred, in whole or in part, because Plaintiff has failed to request preparation of the administrative record as statutorily required.

XX

The Complaint is barred, in whole or in part, because this Court does not have subject matter jurisdiction over state court claims.

XXI

The Complaint is barred, in whole or in part, because the claims asserted by Plaintiff are not ripe for review.

XXII

Defendant acted on permissible considerations and without intent to discriminate.

XXIII

Plaintiff fails to establish a physical or regulatory taking. Thus, claims for violation of substantive and procedural due process should be dismissed.

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**XXIV**

The Complaint is barred, in whole or in part, because Plaintiff(s) lack(s) standing to bring the instant action.

**XXV**

Defendant responds to the Complaint without prejudice or the right to amend pending a request and/or filing of a proper administrative record.

**PRAYER FOR RELIEF**

WHEREFORE, Defendant requests the following relief:

1. That the action be dismissed with prejudice;
2. That Plaintiff take nothing by its action;
3. Defendant recover its costs of suit incurred herein; and
4. The court award such other and further relief as it deems proper.

Dated: June 5, 2008

MICHAEL J. AGUIRRE, City Attorney

By /s/ John H. Serrano
John H. Serrano
Deputy City Attorney
Attorneys for Defendant City of San Diego.

**DECLARATION OF SERVICE**

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; and that I served the following document(s):

- **DEFENDANT CITY OF SAN DIEGO'S ANSWER TO COMPLAINT**

on the individuals listed below in the manner indicated.

**Electronic Mail**

I served the following by electronic mail at the e-mail addresses listed below:

Julian K. Quattlebaum, III, Esq.
jq@channellawgroup.com

Executed: June 5, 2008, at San Diego, California.

Ginger Botha

**Ginger Botha**